

Appeal from a decision of the Idaho State Office, Bureau of Land Management, declaring 10 lode mining claims and 1 millsite abandoned and void. I MC 44830 through I MC 44840.

Affirmed, as modified.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

The failure to file the instruments required by sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and 43 CFR 3833.1 and 3833.2 in the proper Bureau of Land Management office within the time periods prescribed therein conclusively constitutes abandonment of the mining claim by the owner.

2. Notice: Generally--Regulations: Generally--Statutes

All persons dealing with the Government are presumed to have knowledge of relevant statutes and duly promulgated regulations.

3. Agency--Applications and Entries: Filing--Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Recordation--Mistakes

One who chooses the means of delivery of a document must accept the responsibility

and bear the consequences of delay or nondelivery by that method.

APPEARANCES: Carl B. Andersen, pro se.

#### OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

The mining and millsite claims in question 1/ were located at various times prior to October 21, 1976. On October 22, 1979, Carl Andersen, who apparently holds an interest in the claims, 2/ filed copies of evidence of annual assessment work for 1979 (along with certain other years) with the Bureau of Land Management (BLM), as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR Subpart 3833.

On February 13, 1980, Andersen filed with BLM copies of notices of location for some of the claims, but no copies of location notices were filed for the rest of the claims. Andersen filed evidence of annual assessment work for 1980 with BLM on January 2, 1981. On January 16, 1981, BLM issued a decision notifying Andersen that the claims were abandoned and void because neither evidence of annual assessment work nor a notice of intention to hold them was received on or before December 30, 1980, as required by 43 CFR 3833.2. Andersen appealed.

[1] Section 314 of FLPMA requires the owner of an unpatented mining or millsite claim located on public land before October 21, 1976, to file with the proper BLM office within the 3-year period following October 21, 1976, a copy of the official record of the notice or certificate of location. The section further provides that failure to file timely the required instruments shall be conclusively deemed to constitute an abandonment of the claim. The statutory requirements are repeated in 43 CFR 3833.1-2(a) and 3833.4.

The record indicates that appellant did not file copies of the official notice or certificate of location for some of the claims. The copies that he did file for the rest were not filed until February 13, 1980, more than 3 months after the deadline. Accordingly, appellant's claims are deemed to be abandoned and void in accordance with 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a). Kenneth C. Eichner, 56 IBLA 391 (1981).

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1/ The lode mining and millsite claims are as follows:

Spud Creek Nos. 1-4 (I MC 44830 through I MC 44833); Bar-W Nos. 1-3 (I MC 44834 through I MC 44836); Mule Shoe Millsite No. 1 (I MC 44837); Mule Shoe Nos. 2-4 (I MC 44838 through I MC 44840).

2/ Andersen was a locator of some, but not all of these claims. For purposes of this decision, we assume that he has an interest in each claim.

Section 314 of FLPMA, and 43 CFR 3833.2-1(a), require that an owner of an unpatented mining claim located on public land before October 21, 1976, file with the proper BLM office by October 22, 1979, and on or before December 30 in each subsequent calendar year, evidence of annual assessment work performed on the claim or a notice of intention to hold the claim. <sup>3/</sup> Failure to file timely the required instruments shall be conclusively deemed to constitute an abandonment of the claim in accordance with the aforementioned statute and 43 CFR 3833.4(a).

Appellant filed evidence of annual assessment work, but not until January 2, 1981, 3 days after the deadline. Thus, appellant's claims also would have been properly deemed abandoned and void for failure to file timely the evidence of annual assessment work in accordance with 43 U.S.C. § 1744(c) (1976) and 43 CFR 3833.4(a) had they not already been deemed abandoned and void by statutory presumption because of his failure to file timely the copies of the notice or certificate of location.

[2] Appellant states that he was not aware until the evening of December 28, 1980, that he was required to file evidence of annual assessment work with BLM, and that he should have been notified by BLM of the requirement. BLM has no duty to notify appellant of his filing requirements. All persons dealing with the Government are presumed to have knowledge of duly promulgated statutes and regulations. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); L. M. Pern, 57 IBLA 339 (1981); D. E. Bailey, 57 IBLA 120 (1981).

[3] Appellant alleges that he mailed his evidence of annual assessment work to BLM on the morning of December 29, 1980, and that he

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<sup>3/</sup> The applicable regulation with respect to the millsite claim is 43 CFR 3833.2-1(d), which provides that the owner of a millsite shall file a notice of intention to hold in the proper BLM office on or before Dec. 30 of each year following the year of recording. Therefore, by regulation, appellant should have filed a notice of intention to hold the millsite with BLM on or before Dec. 30, 1980. However, there is no statute requiring the filing of notices of intention to hold millsites, as there is for mining claims. Thus, the statutory presumption of abandonment would not apply to a failure to make the millsite filings required by 43 CFR 3833.2-1(d), and we have held that the failure of a millsite owner to file a notice of intention to hold is a curable defect. Normally, BLM would notify the claimant of a deficiency and afford him a period of time in which to comply with the regulatory requirement. Feldslite Corporation of America, 56 IBLA 78, 88 I.D. 643 (1981). However, since the millsite is properly deemed to be abandoned and void because of appellant's failure to file location notices timely, providing him with additional time in which to furnish a notice of intention to hold would serve no purpose.

was assured by the postal clerk that the document would reach BLM on December 30, 1980. The record indicates, however, that the document did not reach BLM until January 2, 1981. Appellant, having chosen the means of delivery of the document, must accept the responsibility and bear the consequences of delay or nondelivery by that method. Guy A. Matthews, 58 IBLA 246 (1981). This Board has no authority to waive compliance with statutory requirements. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, as modified.

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Bernard V. Parrette  
Chief Administrative Judge

We concur:

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Douglas E. Henriques  
Administrative Judge

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C. Randall Grant, Jr.  
Administrative Judge

